

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 243 of 1991

with

SPECIAL CIVIL APPLICATION No 3103 and 7578 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MR CHOKSI

Versus

STATE OF GUJ

Appearance:

1. Special Civil Application No. 243 of 1991
MR SP HASURKAR for Petitioner No. 1-3
MR SIRAJ GORI AGP for Respondent No. 1
SERVED BY RPAD - (R) for Respondent No. 2
RULE SERVED for Respondent No. 3
MR RD DAVE for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 17/06/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Special Civil Application No.243 of 1991 challenges the constitutional validity of sub-section (4A) of Section 47 of the Gujarat Sales-tax Act, 1969 on the ground that the said provisions are violative of Articles 14, 19(1)(g) and 300A of the Constitution of India. The said petition also challenges the order dated 5.8.1989 passed by the Assistant Sales-tax Commissioner (Appeals), Baroda on the basis of which the Deputy Collector, Revenue Recovery, Bombay had initiated the proceedings for recovery of arrears of sales-tax dues of M/s. Choksi Plastics Pvt. Ltd. from the present petitioners who are the Directors of the said Company. The said proceedings are challenged on the ground that the Company and its Directors being separate legal entities, the liability of the Company to pay sales-tax cannot be fastened on the Directors personally or on the personal properties of the Directors, in absence of any provision to that effect under the Gujarat Sales-tax Act, 1969. Consequential reliefs are also prayed for in the petition.

2. Special Civil Application No.3103 of 1991 also challenges the constitutional validity of the provisions of sub-section (4A) of Section 47 of the Gujarat Sales-tax Act, 1969 (for brevity, "the Act") and consequential reliefs are prayed for.

3. Special Civil Application No.7578 of 1991 is filed by the two Directors of the Kutch Agro Industries Pvt. Ltd. and similar proceedings initiated by the Sales-tax Officer, Bhuj and the Recovery Officer, respondents No.1 and 3 herein, for recovery of sales-tax dues of the said Company from the petitioners. In this petition also the proceedings are challenged on the same ground as in Special Civil Application No.243 of 1991.

4. Since these petitions raise common question about constitutional validity of sub-section (4A) of Section 47 and/or about personal liability of Directors for the sales-tax dues of their respective Companies, we have heard Mr Hasurkar and Mr YS Mankad learned counsel for the petitioners and also heard Mr Gori, learned AGP for the respondent-authorities.

5. At the relevant time, sub-section (4A) of Section 47 of the Act as under:-

"(4-A) If a dealer does not pay any amount of tax within the time prescribed for its payment under sub-section (1), (2) or (3) or on or before the date specified in a notice issued under sub-section (4) in respect of the amount of tax falling under sub-clause (ii) of clause (a) thereof, there shall be paid by such dealer for the period commencing on the date of expiry of the aforesaid prescribed time or the specified date and ending on the date of payment of the amount of tax, simple interest at the rate of twenty four per cent per annum on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period;

Provided that where a penalty is levied under sub-section (6) of section 45 in respect of the difference and the period referred to in that sub-section, no interest shall be payable under this sub-section on such difference for such period."

However, by Amendment Act No. Guj.20 of 2001, S.6, the rate of interest is reduced from 24 per cent to 18 per cent w.e.f. 1.9.2001.

6. As regards challenge to the constitutional validity of sub-section (4A) of Section 47 of the Act, our attention is invited to the decision of another Division Bench of this Court in Ashapura Mineral Company vs. State of Gujarat & Ors., (1993) 89 STC 289 wherein the same challenge was raised before this Court. After examining the provisions under challenge and the relevant authorities and after examining various submissions, this Court turned down the challenge and held as under:-

Section 47(4-A) of the Gujarat Sales Tax Act, 1969, which provides for payment of interest at the rate of 24 per cent per annum on amounts of tax not paid within the prescribed time or within the time specified in notices issued under Section 47(4) or on any amounts remaining unpaid, is a provision for payment of interest by a dealer who does not pay tax within the time prescribed for its payment, or on or before the date specified in the notice issued under sub-section (4). The liability to pay interest arises when tax becomes due, either as a result of furnishing of declaration or return by the dealer or on assessment or reassessment as the case may be. Interest is made payable on that

amount of tax which ought to have been paid earlier, i.e. within the prescribed time or the specified period and which has not been paid. Interest is made payable because Government to that extent is deprived of the use of money which otherwise it could have got at an earlier point of time. The liability arising under section 47(4-A) is absolute in nature. The rate of interest payable is fixed by the Legislature itself and no discretion in that behalf is left with the sales tax authorities. Once it is found that the dealer has not paid tax within the prescribed time the liability to pay interest arises under the Act and it is not open to the sales tax authorities to waive it for any reason. Separate provision has been made by the Legislature for levy of penalty. The rate of interest under section 47(4-A) is also not so high as to render it penal in nature. Considering the purpose for which the withheld amount can be utilised by the State Government, the prevailing rate of interest in the market, the rate of 24 per cent per annum cannot be regarded as too high to retain its compensatory character. Section 47(4-A) is in reality and substance not a provision for imposition of levy of penalty and, therefore, it was not necessary for the Legislature to lay down guidelines and to provide for an inquiry.

Provision for payment of interest being a method of collecting or recovering revenue, it is for the State to decide what is most efficacious for this purpose, and the defaulter has no moral right to make any grievance in this behalf. If the rate of interest fixed for non-payment of tax within time is not unreasonably high, then it cannot be said to be arbitrary or unreasonable.

The Court also considered the contention that the State which had to refund the amount of excess tax paid either voluntarily by the dealer or as a result of an assessment order had to pay lower rate of interest under Section 54 of the Act. The Court negatived the contention about discriminatory treatment and held that the dues of the Government of a State being the dues of the entire people of the State, there is a valid basis for differentiation between dues of the Government of a State and dues of an individual. Whereas the State Government utilises its funds for public welfare, an individual ordinarily uses money for his private

purposes. Hence, the Legislature was justified in treating the State Government as a separate class and providing for a higher rate of interest on the dues of the Government of the State.

7. In view of the aforesaid pronouncement of this Court, the prayers challenging the constitutional validity of the provisions of sub-section (4A) of Section 47 of the Gujarat Sales-tax Act, 1969 are hereby rejected.

8. Coming to the second controversy involved in Special Civil Application No.243 of 1991 and also in Special Civil Application No.7578 of 1991, Mr Hasurkar and Mr Mankad, learned counsel for the petitioners have submitted that since the Company and its Directors are separate legal entities, the liability of the Company to pay sales-tax on sale of goods effected by the Company cannot be fastened on the Directors personally or on the personal properties of the Directors. Referring to the provisions of Section 26, it is submitted that there are special provisions regarding liability to pay tax in certain cases like on the death of the dealer, partition of a Hindu undivided family, dissolution of a firm and transfer of business, termination of the guardianship or termination of the trust, but there is no provision fastening liability of a private Company on its Directors.

Reliance is placed on the decisions in *Desirajur Vennkatakrishna Sarma, In re*, (1955) 25 Company Cases 32, *Kundan Singh vs. Moga Transport Co.(P.) Ltd. & Ors.*, (1987) 62 Comp. Cases 600 and in *Tikam Chand Jain vs. State Government of Haryana & Anr.*, (1987) 62 Comp. Cases 601.

9. On the other hand, Mr Gori, learned AGP for the respondents has vehemently submitted that since the arrears of sales-tax could not be recovered from the respective Companies, the respondent-authorities are justified in taking recourse to the properties of the Directors. Mr Gori has referred to the provisions of Section 78 of the Gujarat Sales-tax Act and has submitted that the analogy is required to be drawn from the said provisions which lay down that where an offence has been committed by a Company, every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of the business of the Company as well as Company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

In the alternative, Mr Gori has submitted that even if the Company and its Directors are separate legal entities, it is open to the authorities to lift the corporate veil and to proceed against the personal properties of the Company.

10. Before dealing with the rival submissions, we would like to point out that in neither of the two petitions i.e. Special Civil Application No.243 of 1991 and 7578 of 1991, the authorities have passed any specific order fastening the liability on the Directors for payment of sales-tax dues of the respective Companies. For instance, in the letter dated 31.8.1989, the Assistant Sales-tax Commissioner (Appeals) Baroda has informed the concerned Sales-tax Officer at Godhra that the appeal filed by Choksi Plastics Pvt. Ltd. was being dismissed on account of non-compliance with the order for deposit of the sales-tax dues of the said Company, but it appeared that the financial position of the Directors of the said Company was good and it was possible to recover the dues from the said Directors. Hence, appropriate action may be taken for recovery of sales-tax dues of the said Company in accordance with law.

It appears that it is on the basis of the aforesaid communication that the Sales-tax Officer, Godhra and the Recovery Officer proceeded against the personal properties of the Directors of Choksi Plastic Pvt. Ltd.. Similarly, in Special Civil Application No. 7578 of 1991 nothing is brought to our notice to indicate that the concerned authority had taken any conscious decision to fasten the Company's liability on the Directors of the Company personally or on their properties.

11. In view of the above factual position, it is not necessary to examine the controversy at length. Suffice it to state that the respondents are not in a position to point out any statutory provision empowering the sales-tax authorities to fasten the liability of Company on its Directors in the matter of payment of sales-tax dues. There appears to be substance in the submission made on behalf of the petitioners that Section 26 containing the said provision regarding liability to pay tax in certain cases covers several contingencies such as the liability in respect of the business carried on by an individual dealer after his death, the liability in respect of the dues where the dealer was an HUF and there is partition amongst various members or group of members; there is dissolution of a partnership firm and also in

case of transfer of business in whole or in part. Unlike Section 179 of the Income-tax Act, 1961, there is no provision in the Sales-tax Act fastening the liability of the Company to pay its sales-tax dues on its Directors.

12. Reliance placed by the learned AGP on the provisions of Section 78 is misconceived. The section specifically deals with offences by companies and the criminal liability is fastened on the Directors who were in charge of and were responsible for the conduct of the business of the Company, but does not at all provide for any personal liability of the Directors to pay the sales-tax dues of the Company nor does it empower the authorities to proceed against the personal properties of the Directors. The very fact that the same Legislature has in the same Act provided for criminal liability of the Directors without providing for any personal liability of the Directors or their personal properties for payment of sales-tax dues of the Company in question, the provisions of Section 78 lend support to the case of the petitioners rather than the case of the authorities.

13. As regards the faint plea of lifting the corporate veil, as per the settled legal position, the corporate veil is not to be lifted lightly. It is only when there is strong factual foundation for lifting the corporate veil that the question of examining the applicability of the principle of lifting such veil would be required to be examined. In neither of the two petitions raising the controversy, the authorities have passed any specific order fastening the liability on the Directors personally, much less any factual foundation has been laid to invoke the doctrine of lifting the corporate veil. Hence it is not necessary to dilate on the said principle any further.

14. In view of the above discussion, Special Civil Application No.3103 of 1991 is rejected since the constitutional validity of sub-section (4A) of Section 47 of the Gujarat Sales-tax Act, 1969 is already upheld in the case of Ashapura Mineral Company vs. State of Gujarat & Ors., (1993) 89 STC 289. Rule is discharged.

Similar prayer made in Special Civil Application No.243 of 1991 is also rejected.

15. However, Special Civil Application No.243 of 1991 and 7578 of 1991 are allowed to the extent that the respondents are restrained from proceeding against the petitioners or their personal properties for recovery of the sales-tax dues of the respective Companies in which

they are Directors.

Rule is made absolute to the aforesaid extent only in the said two petitions. There shall be no order as to costs.

(M.S. SHAH, J.)

(D.A. MEHTA, J.)

zgs/-